IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORTION	§	
Plaintiff/Counter-Defendant	§	
	§	
vs.	§	No. 2:06cv72 (DF)
	§	Jury Trial Demanded
WELLS FARGO & COMPANY;	§	
WELLS FARGO BANK, NATIONAL	§	
ASSOCIATION	§	
Defendants/Counter-Plaintiff	§	

DATATREASURY'S ANSWER TO BANK OF TOKYO-MITSUBISHI UFJ, LTD.'S AMENDED COUNTERCLAIMS

Plaintiff/Counter-Defendant DataTreasury Corporation hereby files its Answer to Bank of Tokyo-Mitsubishi UFJ, Ltd.'s ("Bank of Tokyo") Amended Counterclaims to Plaintiff's First Amended Complaint for Patent Infringement and in support thereof, states as follows:

1. In paragraph 102 of Defendants' Amended Counterclaim, Bank of Tokyo has incorporated Paragraphs 93 through 101 of Defendant's Amended Answer which are affirmative defenses by Defendant Bank of Tokyo for which Defendant has the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 101 as denied.

2. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 103 of Bank of Tokyo's Amended Counterclaim.

Dockets.Justia.com

3. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 104 of Bank of Tokyo's Amended Counterclaim.

4. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 105 of Bank of Tokyo's Amended Counterclaim.

FIRST COUNTERCLAIM

(Declaratory Judgment of NonInfringement)

5. In paragraph 106 of Defendants' Amended Counterclaim, Bank of Tokyo has incorporated Paragraphs 93 through 101 of Defendant's Amended Answer which are affirmative defenses by Defendant Bank of Tokyo for which Defendant has the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 101 as denied.

6. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 107 of the first counterclaim of Bank of Tokyo's Amended Counterclaims.

7. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 108 of the first counterclaim of Bank of Tokyo's Amended Counterclaims.

8. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 109 of the first counterclaim of Bank of Tokyo's Amended Counterclaims.

SECOND COUNTERCLAIM

(Declaratory Judgment of Invalidity)

9. In paragraph 110 of Defendants' Amended Counterclaim, Bank of Tokyo has incorporated Paragraphs 93 through 101 of Defendant's Amended Answer which are

affirmative defenses by Defendant Bank of Tokyo for which Defendant has the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 101 as denied.

10. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 111 of the second counterclaim of Bank of Tokyo's Amended Counterclaims.

THIRD COUNTERCLAIM

(Declaratory Judgment of Unenforceability)

11. In paragraph 112 of Defendants' Amended Counterclaim, Bank of Tokyo has incorporated Paragraphs 93 through 101 of Defendant's Amended Answer which are affirmative defenses by Defendant Bank of Tokyo for which Defendant has the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 101 as denied.

12. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 113 of the third counterclaim of Bank of Tokyo's Amended Counterclaims.

FOURTH COUNTERCLAIM

(Laches and/or Statute of Limitations)

13. In paragraph 114 of Defendants' Amended Counterclaim, Bank of Tokyo has incorporated Paragraphs 93 through 101 of Defendant's Amended Answer which are affirmative defenses by Defendant Bank of Tokyo for which Defendant has the burden of

proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 101 as denied.

14. Plaintiff/Counter-Defendant denies the allegations contained in paragraph 115 of the fourth counterclaim of Bank of Tokyo's Amended Counterclaims.

FIFTH COUNTERCLAIM

(Exceptional Case)

15. In paragraph 116 of Defendants' Amended Counterclaim, Bank of Tokyo has incorporated Paragraphs 93 through 101 of Defendant's Amended Answer which are affirmative defenses by Defendant Bank of Tokyo for which Defendant has the burden of proof, and no response is required by Plaintiff/Counter-Defendant. However, in the event any response would be required by Plaintiff/Counter-Defendant, DataTreasury Corporation responds to each of the affirmative defenses contained in paragraphs 93 through 101 as denied.

15. Plaintiff/Counter-Defendant denies that Defendant Bank of Tokyo is entitled to recover reasonable attorneys fees as alleged in paragraph 117 of the fifth counterclaim of Bank of Tokyo's Amended Counterclaims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Counter-Defendant prays for judgment against Defendants/Counter-Plaintiffs as follows:

A. For judgment dismissing the counterclaims with prejudice;

B. For a declaration that this is an exceptional case, and an award to Plaintiff/Counter-Defendant of its costs and attorneys' fees incurred herein;

C. An award of the costs of this action; and

D. That Plaintiff/Counter-Defendant be awarded such other and further relief as the Court may deem just and proper, including all relief requested in Plaintiff's Complaint.

Respectfully submitted,

_____________/S/_______________________

EDWARD L. VON HOHN, Attorney in Charge
State Bar No. 09813240
ROD COOPER
State Bar No. 90001628
EDWARD CHIN
STATE BAR NO. 50511688
NIX PATTERSON & ROACH LLP
5215 N. O'Connor Blvd. Ste. 1900
Irving, Texas 75039
972.831.1188 (telephone)
972.692.5445 (facsimile)
edhohn@nixlawfirm.com
rodcooper@nixlawfrm.com
edchin@nixlawfirm.com
C. CARY PATTERSON
State Bar No. 15587000
BRADY PADDOCK
State Bar No. 00791394
ANTHONY BRUSTER
State Bar No. 24036280
R. BENJAMIN KING
State Bar No. 24048592
NIX PATTERSON & ROACH L.L.P.
2900 St. Michael Drive, Suite 500
Texarkana, Texas 75503
903.223.3999 (telephone)
903.223.8520 (facsimile)
akbruster@nixlawfirm.com
bpaddock@nixlawfirm.com
benking@nixlawfirm.com

JOE KENDALL
State Bar No. 11260700
KARL RUPP
State Bar No. 24035243
PROVOST * UMPHREY, L.L.P.
3232 McKinney Avenue, Ste. 700
Dallas, Texas 75204
214.744.3000 (telephone)
214.744.3015 (facsimile)
jkendall@provostumphrey.com
krupp@provostumphrey.com

ERIC M. ALBRITTON
State Bar ;No. 00790215
ALBRITTON LAW FIRM
P.O. Box 2649
Longview, Texas 75606
903.757.8449 (telephone)
903.758.7397 (facsimile)
ema@emafirm.com

T. JOHN WARD, JR.
State Bar No. 00794818
LAW OFFICE OF T. JOHN WARD, JR.
P.O. Box 1231
Longview, Texas 75601
903.757.6400 (telephone)
903.757.2323 (facsimile)
jw@jwfirm.com

ATTORNEYS FOR PLAINTIFF/COUNTER-DEFENDANT,DATATREASURY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record, via CM/ECF, on the 17th day of April, 2007.

___________/S/______________________
Edward Lewis von Hohn